

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
BEAUFORT DIVISION

Otis Faust,	)	Civil Action No.: 9:07-00058-RBH
	)	
Plaintiff,	)	
	)	
vs.	)	<b>O R D E R</b>
	)	
Ridgeland Correctional Institution,	)	
Employees; Associate Warden	)	
Burton; Major Christopher Felder;	)	
Director Jon Ozmint; IGC Mary	)	
Montouth, Lieutenant Reginald	)	
McNeil; and Warden Douglas Taylor,	)	
	)	
Defendants.	)	
	)	

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Plaintiff, Otis Faust, proceeding pro se, filed this action on January 9, 2007, alleging violations of 42 U.S.C. § 1983. In accordance with 28 U.S.C. § 636(b) and Local Rule 73.02, D.S.C., this matter was referred to United States Magistrate Judge George C. Kosko, for pretrial handling. On November 13, 2007, the defendants filed a motion for summary judgment. An amended motion with attached affidavits of Dennis Long and Officer Shirley Long was filed on November 21, 2007. On November 27, 2007, defendants filed an affidavit of Major Christopher Felder with attachments. On December 12, 2007, the plaintiff filed a response to the motion for summary judgment. He filed an amended response on December 26, 2007.

Magistrate Judge Kosko issued a Report and Recommendation on May 9, 2008 in which he recommended that the action be dismissed for failure to exhaust administrative remedies. In the Report, he refers to the affidavit of Disciplinary Hearing Officer Shirley Singleton in connection with his discussion of the grievances filed by the plaintiff which are at issue. The memorandum in support of motion for summary judgment also references this affidavit. However, the Court has been unable to

locate the affidavit in the electronic filings with the Court.<sup>1</sup> It is not possible for this Court to review the matter without being able to review all matters referenced in the Report and in the defendants' Memorandum.

Therefore, the motion for summary judgment is denied without prejudice, with leave to re-file and include the missing Singleton affidavit that has been referred to in the Court filings. The matter is recommitted to the Magistrate Judge for further proceedings.

**IT IS SO ORDERED.**

s/R. Bryan Harwell  
R. Bryan Harwell  
United States District Judge

August 28, 2008  
Florence, SC

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<sup>1</sup> The Court assumes that the affidavit may reference the defendants' records regarding grievances that the plaintiff has filed.